



Legislative Bulletin.....July 13, 2005

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H.R. 2864—Water Resources Development Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: Various

Total Cost of Discretionary Authorizations: About \$10.3 billion over ten years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$22.5 million increase over five years

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 2864—Water Resources Development Act (Young of Alaska)

NOTE:

--The last WRDA passed by the House was in 2003 (H.R. 2557, which did not pass the Senate), at a cost of \$2.72 billion over five years. The last time WRDA was signed into law was in 2000 (Public Law 106-541), at a cost of \$1.6 billion over five years. This year's bill would authorize **\$4.369 billion over five years--and another \$5.9 billion over the subsequent five years.**

--The Congressional Research Service notes that, "The Corps now has a 'backlog' of more than 500 authorized projects that have not consistently received construction appropriations."

--The bill contains a new **\$1.8 billion** authorization for new locks on the Upper Mississippi River and Illinois Waterway, even though the President's FY2006 Budget does **not** include any money for them.

Order of Business: Consideration of the structured rule (H.Res. 346) for H.R. 2864 is scheduled to be considered on Wednesday, July 13, 2005. The bill itself is scheduled to be considered on Thursday, July 14th, subject to this rule. Amendments made in order under the rule are summarized below.

Summary: H.R. 2864 authorizes Army Corps of Engineers river and harbor projects under the Water Resources Development Act (WRDA) and otherwise provides for funds aimed at the development and conservation of water resources. Highlights of the bill are as follows:

Title I—Water Resources Projects

- Authorizes appropriations for the federal cost-shares of 25 water resources projects (listed in the bill) in Alaska, Arizona, California, Colorado, Florida, Illinois, Louisiana, Missouri, New Jersey, New Mexico, Texas, Virginia, and Washington. Also includes project features and restrictions for some of the authorized projects.
- Requires the Secretary of the Army to determine whether a flood damage reduction project is justified in **35** localities (listed in the bill) in Alabama, Arizona, Arkansas, California, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, South Carolina, and Texas—and allows the Secretary to carry out the projects deemed appropriate. Also provides special rules for five of the 35 projects.
- Requires the Secretary of the Army to determine whether an emergency streambank protection project is justified in **16** localities (listed in the bill) in Arkansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, New York, Tennessee, Texas, and Vermont—and allows the Secretary to carry out the projects deemed appropriate.
- Requires the Secretary of the Army to determine whether a navigation project is justified in **13** localities (listed in the bill) in Arkansas, Hawaii, Louisiana, Maryland, Massachusetts, and Michigan—and allows the Secretary to carry out the projects deemed appropriate. Also provides special rules for two of the 13 projects.
- Requires the Secretary of the Army to determine whether an environmental improvement project is justified in **six** localities (listed in the bill) in California, Delaware, Iowa, Missouri, New Jersey, and Pennsylvania—and allows the Secretary to carry out the projects deemed appropriate.
- Requires the Secretary of the Army to determine whether an aquatic ecosystem project is justified in **31** localities (listed in the bill) in Alabama, California, Florida, Georgia, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, Ohio,

Oregon, Pennsylvania, Rhode Island, South Carolina, and Vermont—and allows the Secretary to carry out the projects deemed appropriate.

- Requires the Secretary of the Army to determine whether a shoreline protection project is justified in **seven** localities (listed in the bill) in Alaska, Florida, Guam, New York, and Pennsylvania—and allows the Secretary to carry out the projects deemed appropriate.
- Requires the Secretary of the Army to determine whether a snagging and sediment removal project is justified in **one** locality (listed in the bill) in New York—and allows the Secretary to carry out the project, if deemed appropriate.

Title II—General Provisions

- Prohibits the Secretary of the Army from soliciting non-federal contributions for projects in excess of the non-federal share listed in this legislation.
- Extends and increases various projects in existing law.
- Authorizes \$150 million over five years for the Secretary to provide assessment, planning, and design assistance to state and local governments for remediation, environmental restoration, and reuse of areas that will contribute to improvement in water quality or to conservation of water and related resources. The federal share could not exceed 50%.
- Requires that the Army compile and print a volume of all laws related to the improvement of rivers and harbors, flood control, beach erosion, and other water resources development.
- Authorizes the Secretary to enter into cost-sharing agreements with non-federal entities for dredged materials projects.
- Permits the Secretary to recommend a project for harbor and navigation improvements without the need to demonstrate that the project is justified solely by national economic development benefits if the affected community is relatively remote, or is in one of the U.S. territories, or relies on the harbor for its survival.
- Allows cost-sharing of the use of dredged materials at any water resources project (not just aquatic ecosystem restoration projects, as in current law) and allows non-profit entities to serve as the non-federal interest for such a project under certain circumstances. Identifies priority areas in Arkansas, Florida, Louisiana, New York, North Carolina, and Texas.
- Provides that for projects when there is an increase in the maximum amount of federal funds authorized or in the total cost, cost-sharing requirements would not be affected.

- Directs the Secretary to expedite any authorized flood damage reduction project for areas that have been affected by major-disaster or deadly flooding within the previous five years.
- Adds the Secretary of the Army to the list of federal agencies authorized to enter into contracts with state and local governmental entities, including local fire districts, for procurement of firefighting services.
- Authorizes the Secretary to provide certain technical planning assistance to a non-federal entity, at their request and at federal expense.
- Allows the Secretary to assist in consolidating and streamlining all agency environmental assessments, project review, and issuance of permits for the construction of non-federal water supply, wastewater, flood control, environmental restoration, and navigation projects that require the Secretary's approval, if reimbursed by the non-federal entity.
- Requires the Secretary to develop and implement a coordinated review process for water resources projects, with the goal of streamlining the review, licensing, and approvals procedures.
- Adds six new authorized lake silt-removal projects.
- Authorizes the Secretary to enter into cooperative agreements with nonprofit entities to carry out wetlands restoration at authorized water projects, capped at \$1 million per project and \$5 million per year.
- Requires that the objective of any flood damage reduction, navigation, or storm damage reduction project be to maximize the net national economic benefits associated with the project and consistent with protecting the environment.
- Requires that the objective of any ecosystem restoration project be to maximize the net national ecosystem restoration benefits associated with the project and consistent with national economic development.
- Requires independent peer review of authorized projects that have an estimated cost of more than \$50 million, with the ability of the Chief of Engineers to exclude certain projects or include projects below the threshold that are controversial. Reviews are limited to 180 days and a cost of \$500,000, unless waived by the Chief of Engineers.
- Allows non-Army students in Corps of Engineers training classes (at cost to the participating students), as appropriate.
- Directs the Secretary to provide public access to water resource and related water quality data in the custody of the Corps of Engineers.

- Expresses that is federal policy to undergo beach and shore protection projects, with an emphasis on areas in which there has already been a federal investment in such protection and restoration and on areas in which sore protection and restoration is needed **because** of federal government activities.
- Increases the annual authorization for aquatic ecosystem restoration projects from \$25 million to \$40 million.
- Increases the annual authorization for small flood damage reduction projects from \$50 million to \$60 million.
- Adds Indian tribes to the list of entities afforded priority by the Corps of Engineers when leasing Corps property.
- Notes that estimates of federal and non-federal costs are informational only and do not affect cost-sharing responsibilities established by law.
- Requires the Chief of Engineers to submit to Congress every January a report on the Corps' expenditures on all (ongoing and proposed) projects for the preceding fiscal year, the current fiscal year, and those necessary to maintain "the same level of effort" for each project in the following fiscal year.

Title III—Project-Related Provisions

- Provides cost ceilings and other limitations on 125 water projects (listed in the bill) in Alaska, Arkansas, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, and Wisconsin.
- Extends the authorizations of two expiring programs (one in Guam and one in Massachusetts).
- Extends the authorizations of two programs (one in Michigan/Wisconsin, and one in Wisconsin), pending determination by the Secretary of the Army that such reauthorization is desirable.
- Terminates in whole or in part the authorizations for 39 projects in California, Connecticut, Florida, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Montana, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Washington, Wes Virginia, and Wisconsin.
- Authorizes six land conveyances in Arkansas, Kansas, Missouri, Oregon, Pennsylvania, and South Carolina.

- Eliminates reversionary interests and use restrictions for three projects in Idaho, Tennessee, and Washington.

Title IV—Studies

- Authorizes 106 new water-related studies (detailed in the bill) in Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.
- Makes adjustments to the funding and timing of certain studies in existing laws.

Title V—Miscellaneous Provisions

- Allows the Secretary of the Army (upon request of an appropriate non-federal entity) to become responsible for the maintenance of six navigation channels and breakwaters constructed or improved by a non-federal interest in Florida, Louisiana, Tennessee, Texas, and Wisconsin.
- Allows the Secretary to provide up to 50% of the costs of technical, planning, and design assistance to non-federal interests for watershed management, restoration, and development at 29 locations (listed in the bill) in California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Nebraska, New Mexico, New Jersey, New York, Ohio, Pennsylvania, Washington, and Wisconsin. Authorizes a total of \$15 million for such assistance.
- Allows the Secretary to provide dam safety assistance at nine locations (listed in the bill) in Idaho, Michigan, New York, and Pennsylvania. Authorizes a total of \$6 million for such assistance.
- Allows the Secretary, upon request from a non-federal entity, to conduct structural integrity evaluations of flood damage reduction projects and to make repairs and take other corrective action, as needed. Prioritizes a project in Arkansas and another in Tennessee.
- Adds five areas in Louisiana to the current list of flood mitigation priority areas. Authorizes \$20 million.
- Increases the authorization levels for, makes adjustments to, and otherwise extends, dozens of existing projects.
- Requires the expedited study (and completion, if required) of nine potential projects in New York, one in Arkansas, two in Florida, and one in Louisiana.

- Authorizes the Secretary to participate with others in assessing hypoxia in the Gulf of Mexico.
- Authorizes the Secretary to participate in the Potomac River Watershed Assessment and Tributary Strategy Evaluation and Monitoring Program.
- Directs the Secretary of the Army to develop dam security standards, in conjunction with FEMA, the Tennessee Valley Authority, and the Coast Guard.
- Authorizes at least 68 new projects and studies in Alabama, Alaska, Arkansas, California, Delaware, DC, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Puerto Rico, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.
- Authorizes several land conveyances.
- Authorizes \$800,000 for a tsunami warning system along the Atlantic coast of New York.

Title VI—Florida Everglades

- Increases and otherwise adjusts the authorizations for and provisions regarding several projects in the Florida Everglades.
- Authorizes an Indian River Lagoon South project at a cost of \$605.3 million for the federal government.
- Terminates the authorizations for three Florida Everglades projects and explicitly prevents the Secretary from carrying out a project for raising Tamiami Trail.

Title VII—Louisiana Coastal Area

- Directs the Secretary of the Army to submit to Congress reports recommending modifications to address navigation, salt water intrusion, channel bank erosion, mitigation, and threats to life and property at the Mississippi River Gulf Outlet and the Chenier Plain. Also directs the Secretary to develop, within one year, a framework for the development of a long-term, comprehensive restoration plan for the Louisiana Coastal Area, and to submit to Congress, within five years, a report recommending such a plan.
- Establishes a Coastal Louisiana Ecosystem Protection and Restoration Task Force.
- Authorizes \$130 million for the Secretary to conduct feasibility studies for additional projects for the protection, conservation, and restoration of the coastal Louisiana ecosystem.
- Authorizes \$828.3 million for five initial Coastal Louisiana Ecosystem Program projects.

Title VIII—Upper Mississippi River and Illinois Waterway System

- Authorizes the Secretary to undertake navigation improvements and restoration of the ecosystem for the Upper Mississippi River and Illinois Water System.
- Authorizes \$235 million (half from the Treasury and half from the Inland Waterways Trust Fund) for small scale and nonstructural projects on the Upper Mississippi.
- Authorizes \$1.8 billion (half from the Treasury and half from the Inland Waterways Trust Fund) for new locks on the Upper Mississippi River and Illinois Waterway.
- Authorizes \$1.58 billion for ecosystem restoration projects, none of which could exceed \$25 million (except fish passage and dam point control projects).
- Requires a determination of whether projects under this title are being carried out at a comparable rate and, if not, adjustment of annual funding requests accordingly.

Amendments Made in Order under the Rule (H.Res. 346):

All amendments are debatable for 10 minutes.

1. **Young (R-AK): Manager's Amendment.** Makes technical and conforming changes to project-related provisions, and authorizes or modifies additional projects brought to the Committee's attention following Committee action, including:

- Des Moines/Raccoon Rivers, Iowa, project for flood damage reduction;
- Port of Iberia, Louisiana, project for navigation;
- Raritan and Sandy Hook Bays, Union Beach, New Jersey, project for hurricane and storm damage reduction;
- Hocking River, Monday Creek Sub-basin, Ohio, project for environmental restoration;
- Pawley's Island, South Carolina, project for hurricane and storm damage reduction.

(New federal cost of the above projects = \$215.045 million.)

Authorizes two New York projects for emergency streambank protection and one in New York for flood damage reduction.

Strikes the language in the underlying bill about the objectives of project planning (economic development, protecting the environment, etc.) and replaces it with language allowing the Secretary of the Army to select a water resources project alternative that does not maximize net national economic development benefits or net national ecosystem restoration benefits, if there is an "overriding reason based on other federal, state, local, or international concerns," and with analogous language regarding flood damage, hurricane damage, and ecosystem restoration projects.

Authorizes \$15 million in additional funds to establish institutes and initiatives at universities (in Dallas, Illinois, and Tennessee).

Authorizes dozens of other new projects and modifies several dozen existing projects (either in the underlying bill or in current law).

2. **Menendez (D-NJ)**: Authorizes an environmental restoration project in Liberty State Park, New Jersey, contingent on a favorable Chief of Engineer's report being issued for the project prior to December 31, 2005. The federal share would be \$20.8 million, and the local share would be \$11.2 million.

3. **Stupak (D-MI)**: Directs the Secretary of the Army to budget and request appropriations for operation and maintenance of harbor dredging projects based only upon criteria used for such projects in FY2004.

4. **Rohrabacher (R-CA)**: Allows non-federal interests to levy a container or tonnage fee on imports at U.S. ports. The fees collected by the ports under this measure could only be spent on infrastructure and security related to the port that levies the fee.

5. **Davis (D-IL)**: Defines the sections of the North Branch Canal portion of the Chicago River between Kinzie and Fulton Streets as non-navigable.

6. **Flake (R-AZ)/Blumenauer (D-OR)**: Amends the Mississippi River-Illinois Water Way Project in the underlying bill to allow the construction of locks and dams to proceed at the authorization levels in the underlying bill **only if**:

- the combined, three-year average of the number of total tons of commodities processed at the seven locks in the project in calendar years 2007, 2008, and 2009 exceeds 35,000,000 tons;
- an appointment system to schedule and prioritize, based upon the average lockage time of each barge company, traffic movements at each lock on the Upper Mississippi River and Illinois Waterway is implemented by January 1, 2006;
- a cost-benefit analysis of proceeding with the project is submitted to Congress by December 31, 2010; and
- a reevaluation report on whether to proceed with new lock construction, taking into account regional, national, and world market conditions and the development and application of new peer-reviewed models, is submitted to Congress by December 31, 2013.

7. **Kind (D-WI)**: Requires the Secretary of the Army to annually report to Congress (beginning in FY2008) on whether the Mississippi River and Illinois Waterway lock and dam construction and ecosystem restoration projects are being carried out at comparable rates. The underlying bill provides for the Secretary to make such a determination but not for a report to Congress.

Additional Background: WRDA is generally authorized every few years. The last authorization passed by the House was in 2003 (H.R. 2557, which did not pass the Senate), at a

cost of \$2.72 billion over five years. The last time WRDA was signed into law was in 2000 (Public Law 106-541), at a cost of \$1.6 billion over five years. This year's bill would authorize \$4.369 billion over five years.

Committee Action: On June 16, 2005, the Subcommittee on Water Resources and Environment forwarded the bill to the full Transportation and Infrastructure Committee by voice vote. On June 22nd, the full Committee, by voice vote, ordered the bill reported to the full House.

Possible Conservative Concerns: Conservatives may be concerned at the high level of authorizations (compared to recent WRDA bills—see “Additional Background” above) and new projects and programs. Conservatives may particularly be concerned about the new **\$1.8 billion** authorization for new locks on the Upper Mississippi River and Illinois Waterway, since the President's FY2006 Budget did not include any money for them.

The Congressional Research Service notes that, “The Corps now has a ‘backlog’ of more than 500 authorized projects that have not consistently received construction appropriations.”

Administration Position: A Statement of Administration Policy (SAP) on H.R. 2864 was not available at presstime.

Cost to Taxpayers: CBO reports that H.R. 2864 would authorize appropriations of \$946.0 million in FY2006 and a total of \$4.369 billion over the FY2006-2010 period. The bill would authorize an additional \$5.9 billion over the subsequent five years. The bill would also increase mandatory spending by 13.0 million in FY2006 and a total of \$22.5 million over the FY2006-2010 period.

NOTE: the House Budget Committee reports that the increase in mandatory spending in H.R. 2864 **will violate the Budget Act** once the surface transportation reauthorization bill (H.R. 3) is signed into law.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill contains various new federal programs and authorities.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No (as confirmed by CBO).

Constitutional Authority: The Transportation and Infrastructure Committee, in House Report 109-154, cites constitutional authority in Article I, Section 8, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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